SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

617

October Term, 1968

SUZANNE G. OGLE,

Appellant,

vs.

V. A. HEIM, Auditor-Controller of the County of Orange, State of California,

Respondent.

APPEAL FROM THE SUPREME COURT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

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LONG BEACH REPORTER

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IN THE

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SUZANNE G. OGLE,

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vs.

V. A. HEIM, Auditor-Controller of the County of Orange, State of California,

Respondent.

STATEMENT AS TO JURISDICTION

The appellant, Suzanne G. Ogle, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

Decision of the Supreme Court of California.

This appeal is taken from a decision by the Supreme Court of California in the above entitled cause, reported at 69 Advance California Reports 1, affirming the decision of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, Civ. No. 8343, unreported, both opinions being appended hereto.

Grounds on Which the Jurisdiction of this Court is Invoked.

Appellant filed a Petition for a Writ of Mandate with the Superior Court of the State of California for the County of Orange on behalf of her two minor children after refusal by respondent to honor an execution

against the pension of a retired county employee, filed on behalf of the employee's minor children under the provisions of Sec. 710 of the California Code of Civil Procedure, based upon the position taken by respondent that a minor child is a creditor and her father is a debtor and that under the provisions of Sec. 31452 of the California Government Code, proceeds of a pension are exempt from attachment or execution.

The decision of the Supreme Court of California sought to be reviewed was dated July 10, 1968, and a Petition for Rehearing having been filed by appellant, an order denying the Petition for Rehearing was filed by the Supreme Court of California on August 8, 1968. Notice of Appeal was filed with the Supreme Court of California on August 20, 1968.

Appellant contends that the decision of the Supreme Court of California deprives the two minor children of appellant, of a vested property right contrary to the provisions of the *Fourteenth Amendment to the United States Constitution.*

Jurisdiction of the Supreme Court of the United States to review the instant case upon appeal is conferred by Title 28, United States Code Secs. 1257 (2), (a) and 2101 (c).

Cases Sustaining the Jurisdiction of this Court.

Under the settled law of California, a child's right to support is property.

A vested right of action is "property" in the same sense in which tangible things are property, and is equally protected against arbitrary interference.

Anderson vs. Ott, 127 C.A. 122, 15 Pac. 2d 526.

The term "property" extends to every species of valuable right or interest. "Property" includes any valuable interest in or to any object of value that a person may lawfully acquire or hold, and also the right to be protected in one's personal privileges whether they be secured to him as a member of the commonwealth or as an individual. "Property" includes choses in action.

Scott vs. McPheeters, 33 C.A. 2d 629, 632, 92 Pac. 2d 678.

In an action for wrongful death under Sec. 377 of the *California Code of Civil Procedure*, of a husband and father, the cause of action of minor children was held to survive the defendant's death, and specifically

"the cause of action of respondents involving a diminution of their support both *in presente* and in expectancy which they would have received from the decedent.

Such support, although it came by virtue of Mr. Nash's earning power, was the "estate" of respondent, and the loss they suffered by reason of his death existed during the lifetime of Belyea. It follows that the latter estate is liable to respondents for such loss."

Nash vs. Wright, 82 C.A. 2d 475, 476, 186 Pac. 2d, 691.

In *Calhoun vs. Calhoun*, 81 C.A. 2d 297, 183 Pac. 922, the Court defined the right of support of a wife at page 301 as a "right existing by virtue of the marital status of contract and may be classified as a property right."

Sec. 14 of the *California Civil Code* provides in part as follows:

"The words 'personal property' include money,

goods, chattels, *things in action*, and evidences of debt."

In *Ponsonby vs. Sacramento Suburban Fruit Lands Co.*, 210 Cal. 229, the Court states as follows:

> "The term (property) is a generic one . . . When unqualified the term is sufficiently comprehensive to include every species of estate, both real and personal, whether choate or inchoate (citations), whether corporeal or incorporeal (citations). The word is sometimes used in the sense of 'estate' . . . Further with respect to property, it is stated in 50 Corpus Juris, pages 736-738, that 'Generally, the subjects of property comprise all valuable rights or interests protected by law . . . In the broad sense of the term, 'property' includes . . . choses in action . . . In modern legal systems, property includes practically all valuable rights. The term is indicative and descriptive of every possible interest which a person can have, extends to every species of valuable right or interest, and comprises a vast variety of rights. The right to be protected in a person's privileges belonging to him as an individual or secured to him as a member of the commonwealth, is property, as is any valuable interest in or to any object of value that a person may lawfully acquire or hold."

In *Lewis vs. Lewis*, 174 Cal. 336, the California Supreme Court states at page 339 as follows:

> "As a general proposition, no one would doubt that parents are under an obligation to support their minor children. This duty rests on fundamental natural laws and has always been recognized by the courts in the absence of any statute declaring it."

A chose in action is property under California law.

Bensinger vs. Davidson, 147 F.S. 240.

In *Strecker vs. Strecker*, 199 N.Y.S. 2d 111, 113, the court states as follows:

> " 'The duty of parents to provide for the *maintenance* of their children is a principle of natural law; an obligation laid upon them not only by nature herself, but by their own proper act, in bringing them into the world.' 1 Blackstone Commentaries on the Laws of England, 446-447, (11th ed. 1791)."

The Supreme Court of California holds in the case at bar that child support is a commercial debt, making the child a creditor and its father a debtor, and that the exemption provisions generally relating to a debtor and creditor relationship are applicable to a child's right to support.

In *Audubon vs. Shufeldt*, 181 U.S. 575, 577, 45 L. ed. 1009, this Court has held, interpreting the Bankruptcy Act of July 1, 1898, Chap. 541, that a claim for alimony is not a debt and is not dischargeable in bankruptcy.

Specifically this Court states at page 1010, as follows:

> "Alimony does not arise from any business transaction, but from the relation of marriage. It is not founded on contract, express or implied, but on the natural and legal duty of the husband to support the wife. The general obligation to support is made specific by the decree of the court of appropriate jurisdiction. Generally speaking, alimony may be altered by that court at any time, as the circumstances of the parties may require. The decree of a court of one state, indeed, for the present payment of a definite sum of money as alimony, is a record which is entitled to full faith and credit in another state, and may therefore be there enforced by suit. *Barber vs. Barber* (1858) 21 How. 582 L. ed. 226;

Lynde vs. Lynde (1901) 181 U.S. 183, *ante*, 810, 21 Sup. Ct. Rep. 555. But its obligation in that respect does not affect its nature. In other respects, alimony cannot ordinarily be enforced by action at law, but only by application to the court which granted it, and subject to the discretion of that court. Permanent alimony is regarded rather as a portion of the husband's estate to which the wife is equitably entitled, than as strictly a debt; alimony from time to time may be regarded as a portion of his current income or earnings . . ."

In *Dunbar vs. Dunbar*, 190 U.S. 340, 47 L. ed. 1084 involving the same section of the Bankruptcy Act, this Court states at page 1092 as follows:

"In relation to that part of the husband's contract to pay for the support of his minor children until they respectively became of age, we also think that it was not of a nature to be proved in bankruptcy. At common law, a father is bound to support his legitimate children, and the obligation continues during their minority. We may assume this obligation to exist in all the states . . .

We think it was not the intention of Congress, in passing a bankruptcy act, to provide for the release of the father from his obligation to support his children by his discharge in bankruptcy, and if not, then we see no reason why his contract to do that which the law obliged him to do should be discharged in that way. As his discharge would not, in any event, terminate his obligation to support his children during their minority, we see no reason why his written contract acknowledging such obligation and agreeing to pay a certain sum (which may be presumed to have been a reasonable one) in fulfilment thereof should be so discharged."

In *Seidenberg vs. Seidenberg* (Wash. D.C.) 225 F.2d

545, a proceeding by a wife who had obtained judgment against her husband for maintenance and support of minor children to enforce a judgment against the husband's interest as beneficiary of a trust, the Court held that the interest of a father as beneficiary of a *spendthrift trust* could be *invaded* for the support of his minor children. At page 549, the Court states as follows:

> "In every civilized country is recognized the obligation, sacred as well as lawful, of a husband to protect and provide for his family, and to sustain the claim of the husband in the case at bar would be to invest him with a right to be both a faithless husband and a vicious citizen. This case reaches beyond the concern of the immediate parties to it. It affects the status of the family as being the foundation of society and civilization, and hence in a very certain sense is of wide public concern."

Meyer vs. Nebraska, 262 U.S. 390, 67 L. ed. 1042 involved the application of the *Fourteenth Amendment to the United States Constitution* to a statute of the State of Nebraska forbidding the teaching of any but the English language in public schools, and this Court states at page 1045 as follows:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the 14th Amendment. 'No state . . . shall deprive any person of life, liberty, or property without due process of law.'
>
> While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to con-

tract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

With relation to the right of a minor child to invade his father's spendthrift trust for support, it is stated in the *Restatement of Trusts, Second,* in Sec. 157 as follows:

"Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary,

(a) by the wife or child of the beneficiary for support or by the wife for alimony; . . .
Comment on Clause (a):

b. *Dependents of the beneficiary.* Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against him for support by his wife or children. In some cases a spendthrift clause is construed as not intended to exclude the beneficiary's dependents. Even if the clause is construed as applicable to claims of his dependents for support, it is against public policy to give full effect to the provision. The beneficiary should not be permitted to have the enjoyment of his interest under the trust while neglecting to support his dependents. It is a matter for the exercise of discretion by the court having jurisdiction over the administration of the trust as to how much of the income under the trust should be applied for such support and how much the beneficiary himself should receive. Even though the beneficiary's wife has ob-

tained a decree for alimony directing the beneficiary to pay certain sums to her, she cannot compel the trustee to pay her the full amount so decreed unless the court which has jurisdiction over the administration of the trust deems it to be fair to the beneficiary himself to compel the trustee to make such payment. The result is much the same as though the trust were created, not solely for the benefit of the beneficiary, but for the benefit of himself and his dependents."

California Statutes Involved in Appeal

Appellant filed an affidavit with respondent under the provision of Sec. 710 of the *California Code of Civil Procedure* for the purpose of collecting child support under a valid judgment for such support from a pension due the minors' father from the County of Orange, and respondent refused to honor the affidavit filed under the statutory provisions by reason of the provisions of Sec. 31452 of the *California Government Code.*

Sec. 710 of the *California Code of Civil Procedure* reads in part as follows:

"(a) Whenever a judgment for the payment of money is rendered by any court of this state against a defendent to whom money is owing and unpaid by this state or by any county, city and county, city or municipality, quasi-municipality or public corporation, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit stating the exact amount then due, owing and unpaid thereon and that he desires to avail himself of the provisions of this section in the manner as follows: . . .

(2) Filing with political subdivision.

2. If such money, wages or salary is owing and unpaid to such judgment debtor by any county, city

and county, city or municipality, quasi-municipality or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor, less an amount equal to one-half the salary or wages owing by the county, city and county, city, municipality, quasi-municipality, or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor."

Sec. 31452 of the *California Government Code* reads as follows:

"The right of a person to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, and any property purchased for investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district, and from any law relating to bankruptcy or insolvency. They are not subject to execution, garnishment, attachment, or any other process of court whatsoever, and are unassignable except as specifically provided in this chapter."

Issue Presented by this Appeal

The issue presented by this appeal is whether appelant's minor children were deprived of a vested property right in violation of the provisions of the *Fourteenth Amendment to the United States Consitution* by the decision of the Supreme Court of Calfornia holding that a minor's action for support from its father places the minor in the position of a commercial creditor and the father in the position of a commercial debtor, by interpreting Sec. 31452 of the *California Government Code* as exempting the pension of their father from execution by the minor children for support.

STATEMENT OF FACTS

This proceeding is based upon a petition for Writ of Mandate filed by appellant, and answers filed thereto by respondent and Joel E. Ogle, real party in interest.

The petition generally alleges that petitioner and Joel E. Ogle were husband and wife, and that petitioner has the custody of the two minor children of the parties, aged 9 and 10, respectively.

In a decree in an action for divorce between petitioner and Joel E. Ogle, the Court ordered Joel E. Ogle to pay for the support of each minor child the sum of One Hundred Fifty ($150.00) Dollars, or a total of Three Hundred ($300.00) Dollars per month payable on the 1st day of each month, commencing August 1, 1963. Joel E. Ogle was County Counsel of the County of Orange, now retired, and collects a retirement allowance from the County of Orange in the sum of Two Hundred Twenty-five ($225.00) Dollars per month, for life, which constitutes the return contributions made from community property during the marriage of petitioner and Joel E. Ogle.

Joel E. Ogle failed and refused to make the payments ordered by the court for child support, and on December 23, 1965, he was in arrears for payments due under the order for child support in the sum of One Thousand Three Hundred Fifteen and 43/100 ($1,315.43) Dollars.

Based upon the provisions of Sec. 710 of the *California Code of Civil Procedure*, and paying the fee required by law, petitioner served the affidavit and abstract of judgment on respondent on January 28, 1966.

Respondent refused to comply with the provisions of Sec. 710 of the *Code of Civil Procedure* in view of the provisions of Sec. 31452 of the *Government Code*. (Clk. Tr., p. 1-7)

Petitioner incorporated by reference in her petition, a *Memorandum of Agreement* and attachments, dated July 16, 1963, and filed July 16, 1963, as Exhibit 1, the *Interlocutory Decree of Divorce* and the *Final Judgment of Divorce* in an action pending in the Superior Court of the State of California, for the County of Orange, entitled Joel E. Ogle, Plaintiff, vs. Suzanne G. Ogle, Defendant, being No. 104665.

Petitioner further alleged in her petition that the minor children need the funds allowed them for support, and that they have no other income or assets.

Respondent filed an answer to the petition, alleging as a first affirmative defense that the funds sought to be subject to the process of the court under section 710 of the *Code of Civil Procedure* are not subject to execution, garnishment, attachment or any other process of the court whatsoever under the provisions of Sec. 31452 of the *Government Code*.

The Court filed a judgment denying petitioner's writ; a copy of the judgment is appended hereto.

The Court of Appeal of the State of California, Fourth District, Second Division, affirmed the judgment of the trial court; a copy of the opinion of the Court of Appeal is appended hereto.

The Supreme Court of California granted a hearing, affirmed the judgment of the trial court, and denied a Petition for Rehearing; a copy of the opinion of the Supreme Court of California is appended hereto.

Manner in Which Constitutional Question to be Reviewed was Raised.

The issue on this appeal was first raised in the Memorandum of Points and Authorities in Support of the Petition for Writ of Mandate filed with the Petition for Writ of Mandate, reported commencing at page 11, line 12 of the Clerk's Transcript, as follows:

> "Petitioner contends that as applied to the recovery of support for the minor children of Joel E. Ogle, Sec. 31452 is unconstitutional and particularly violates the provisions of Article I, Section 13, Clause 6 of the *California Constitution*, which states in part:
>
> 'Nor be deprived of life, liberty, or property without due process of law;' and further in violation of the provision of the Fourteenth Amendment, Section 1 of the *United States Constitution*, providing:
>
> 'Nor shall any state deprive any person of life, liberty, or property without due process of law.' "

The issue is discussed in the Memorandum, as reported in the Clerk's Transcript, page 11, line 24 to page 15, line 24.

The trial court denied the Petition for Writ of Mandate without opinion.

The issue of the deprivation of appellant's minor children of the rights guaranteed under the *Fourteenth Amendment to the United States Constitution* was again raised in the appeal to the Court of Appeal of the State of California in Appellant's Opening Brief under the title "*Section 31452 of the Government Code, as applied to the facts of this case, is unconstitutional,*" commencing at page 23 of Appellant's Opening Brief, wherein appellant contends that as applied to the recovery of support for the minor children of Joel E. Ogle, Sec. 31452 of the *Government Code* is unconstitutional and in violation of the guarantees and provisions of the Fourteenth Amendment to the *United States Constitution.* (Appellant's Opening Brief, page 23 to page 26, and page 28).

The Court of Appeal in its opinion answers petitioner's issue, at page 5 as follows:

> "The California cases which permit the exemption of retirement funds carefully note that the exemption does not relieve the judgment debtor from his liability for support, nor does it affect other remedies available to the judgment creditor to enforce the duty to support. (In re *Smallbone, supra,* 16 Cal. 2d 532, 534; *Conaway vs. Conaway,* 218 Cal. App. 2d 427, 429; *Howard vs. Howard, supra,* 166 Cal. App. 2d 386, 389.) Thus, petitioner's claim that the exemption statute (Gov. Code, Sec. 31452) represents a deprivation of property without due process of law in that the minor children are denied a basic and natural right of support is not persuasive, as the exemption of pension moneys from execution may not be construed to relieve a husband or father of his obligation to pay

support money. (See *In re Smallbone, supra; Conaway vs. Conaway, supra.)*"

The Supreme Court of California did not discuss in its opinion the constitutionality of Sec. 31452 of the *Government Code.*

In her Petition for Rehearing, appellant again raised the issue of constitutionality, commencing at page 3 of the Petition for Rehearing, alleging that the application of Sec. 31452 of the *Government Code* is unconstitutional and in violation of the provisions of the *Fourteenth Amendment to the United States Constitution,* (pages 3-7, Petition for Rehearing).

The Supreme Court of California denied the Petition for Rehearing without opinion.

The Federal Question Raised by this Appeal is so Substantial as to Require Plenary Consideration by this Court.

As indicated above, under the statutory law as well as the precedents interpreting the law of California, minor children have a vested property right of support from their father.

As reported, commencing at page 8 of the opinion of the Supreme Court of California, the jurisdictions of New York, New Jersey, Wisconsin and Michigan have held on *substantially identical* statutes that state pension exemption statutes are inapplicable to claims for child support in the absence of language indicating an exceptions for dependents. In addition, precedents from the states of Georgia, Texas, Iowa, Ohio, Pennsylvania, Tennessee, Alabama, Missouri, and the District of Columbia have held that in connection with pension exemption statutes child support is *not* a debt, and a child is not a creditor, nor is a father a debtor in the commercial

sense. (Opinion of the California Supreme Court, page 9, footnote 4).

In diligent search, not a single precedent could be found within the United States which would uphold the validity of an exemption statute relating to pensions against the claim of a minor child for support upon the ground that the child is a commercial creditor and the father is a commercial debtor, and therefore the minor child is bound by the exemption statute, or upon any other ground.

The decision of the Supreme Court of California stands alone in depriving a minor child of a fund created by the earnings of its father and shielding the father against his minor children when they attempt to obtain support from this particular fund.

The authorities cited in the opinion of the Supreme Court of California have universally held that the exemption statutes will not, unless the contrary intention is clearly shown, be construed to enable the father to claim its benefit against the very persons to whom he owes the obligation of support and maintenance, and that to construe the statute otherwise, would, at least in part, defeat its avowed object.

They have held that a court should not be astute in discovering a way to relieve a defendant of his obligations, voluntarily assumed, because of any strict construction of the language of an act which was designed to give protection to the faithful servants of the public *and those dependent upon them.* It was expressed in the cases cited that the purpose of the exemption is to relieve the person exempted from the claims hostile to his dependents' essential needs, as well as his own personal ones, not to relieve him of his family obligations and

destroy what may be the family's only source of security. This, it was held, is the only principle upon which a debtor should be permitted to withhold money within the power of the court from a creditor, the justness of whose claim is undisputed. The purpose of the exemption laws is also stated as to protect an unfortunate debtor and save to him a means of supporting his family, and he cannot avail himself of the statutory exemption to deprive his children of support and maintenance for the protection of which those laws were designed.

The substantiality of the issue raised by this appeal is best illustrated by the language of the opinion in *Shelley vs. Shelley*, 223 Or. 328, 354 Pac. 2d 282, 91 ALR 2d 250, wherein the Court held that a spendthrift trust was amenable to the claims for the support of minor children, and the Court states as follows:

> "The question is whether a person should be entitled to enjoy the benefits of a trust and at the same time refuse to pay the obligations arising out of his marriage.
>
> We have no hesitation in declaring that public policy requires that the interest of the beneficiary of a trust should be subject to the claims for support of his children. England vs. England, supra. Certainly the defendant will accept the societal postulate that parents have the obligation to support their children. If we give effect to the spendthrift provision to bar the claims for support, we have the spectacle of a man enjoying the benefits of a trust immune from claims which are justly due, while the community pays for the support of his children. Wetmore vs. Wetmore, 1896, 149 NY 520, 44 NE 169, 33 LRA 708. We do not believe that it is sound policy to use the welfare funds of this state in support of the beneficiary's children, while he

stands behind the shield of immunity created by a spendthrift trust provision. To endorse such a policy and to permit the spectacle which we have described above would be to invite disrespect for the administration of justice. Seidenberg vs. Seidenberg, D.C. Cir., 1954, 126 F. Supp. 19, 21, affirmed 1955, 96 U.S. App. D.C. 245, 225 F2d 545. One who wishes to dispose of his property through the device of a trust must do so subject to these considerations of policy and he cannot force the courts to sanction his scheme of disposition if it is inimical to the interest of the state. The better reasoned cases in other jurisdictions support this conclusion. Keller vs. Keller, 1936, 284 Ill App. 198, 1 NE2d 773, commented upon in 50 Harv L Rev 143 and 14 Chi-Kent L Rev 276; Zouck vs. Zouck, 1954, 204 Md 285, 104 A2d 573, 105 A2d 214; In re Moorehead's Estate, supra."

On the same issue the Court continues as follows:

"The case of Seidenberg vs. Seidenberg D.C. 1954, 126 F. Supp. 19, 23 affirmed 1955, 96 U.S. App. D.C. 245, 225 F.2d 545, contains an excellent review of the problem. In summary the court said:

'The family is the foundation of society. The duty of a married man to support and protect his wife and children is inherent in human nature. It is a part of natural law, as well as a requirement of the law of every civilized country. It is not an ordinary indebtedness, such as a contractual obligation or a judgment for damages arising out of a tort. It is a responsibility far superior to that of paying one's debts, important as the latter obligation is. No part of a man's property or income should be exempt from meeting this liability, for he is under at least as great a duty to provide shelter, clothing, and food for his immediate family as he is to furnish them for his own person. The law

should not regard with complacency any man who repudiates or ignores this obligation, which is instinctive in mankind, and should not permit him to flout it with impunity.'

The text writers take the same view and in justifying the rule overriding the spendthrift restraint, generally no distinction is made between the claims of dependent children and the claims of the wife for support or alimony. Thus, 2 Scott on Trusts, Sec. 157.1, states:

'. . . The claim of a wife and dependent children to support is based upon the clearest grounds of public policy. They are in quite a different position from ordinary creditors who have voluntarily extended credit. It would be shocking indeed to permit a husband to receive and enjoy the whole of the income from a large trust fund and make no provision for his needy dependents.'

Accord: 6 American Law of Property, Sec. 29.130; 1A Bogert, Trusts and Trustees, Sec. 223; Griswold, Spendthrift Trusts (2d ed), Sec. 339; Note, 14 Temple LQ 229 (1940); Note, 28 Va L Rev 527 (1942)."

The effect of the decision of the Supreme Court of California upon minor children similarly situated to those of appellant, is further illustrated by a decision of the same court, filed the same date as the case at bar, entitled *William L. Miller, Petitioner, vs. The Superior Court of Los Angeles County, et al., Respondents,* appended hereto, reported at 69 Advance California Reports 9, wherein the Supreme Court reversed the decision of the trial court granting a Petition for a Writ of Mandate where the father of minor children had remarried and left the state and was collecting a pension from the Los Angeles Fire Department of $1,352.90 per

month. The reversal of the trial court's judgment was based upon the substantive holding of the Supreme Court in the case at bar which is cited for its ruling that a pension is exempt from attachment or execution by minor children for their support.

It is respectfully submitted that the issue raised by this appeal is substantial for the reasons hereinabove stated, and that unless this Court grants plenary consideration for its resolution, the narrow interpretation of the state statute involved by the Supreme Court of California will result in the deprivation of vested property rights of minor children in violation of the guarantees bestowed by the *Fourteenth Amendment to the United States Constitution.*

CONCLUSION

Appellant Suzanne G. Ogle, respectfully submits that this Honorable Court has jurisdiction of this appeal, and that, if the appeal should be considered as having been improvidently taken, the Court consider it as a petition for writ of certiorari for the reasons stated herein, and prays that the judgment of the Supreme Court of California be reversed.

ERIC A. ROSE
Attorney for Appellant.

APPENDIX 1

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

SUZANNE G. OGLE,

Plaintiff and Appellant,

v.

V. A. HEIM, as County Auditor-Controller, etc.,

Defendant and Respondent;

JOEL E. OGLE,

Real Party in Interest and Respondent.

L.A. 29510

FILED

[illegible], 1968

WILLIAM I. SULLIVAN, Clerk

By [illegible]

S. F. Deputy

APPENDICES

This is an appeal by the plaintiff, Suzanne G. Ogle, from a judgment of the Superior Court of Orange County denying a writ of mandate to compel the Auditor-Controller of Orange County to honor the execution of a judgment for child support from retirement benefits of the judgment debtor. We have concluded that the judgment must be affirmed.

Suzanne Ogle divorced Joel E. Ogle in July 1963 and was awarded custody of their two minor children. Joel was ordered to pay the sum of $150 per month for each child's support, that is, a total sum of $300 monthly. Joel is a retired member of the Orange County Employees